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18 *Attorneys for Plaintiffs*

20 **UNITED STATES DISTRICT COURT**

21 **DISTRICT OF NEVADA**

22 BEVERLY SEVCIK and MARY
BARANOVICH; ANTIOCO CARRILLO
23 and THEODORE SMALL; KAREN
GOODY and KAREN VIBE; FLETCHER
24 WHITWELL and GREG FLAMER;
MIKYLA MILLER and KATRINA
25 MILLER; ADELE TERRANOVA and
TARA NEWBERRY; CAREN
26 CAFFERATA-JENKINS and FARRELL
CAFFERATA-JENKINS; and MEGAN
27 LANZ and SARA GEIGER,

28 Plaintiffs,

No. 2:12-CV-00578-RCJ-PAL

**STIPULATED DISCOVERY PLAN AND
SCHEDULING ORDER**

**SPECIAL SCHEDULING REVIEW
REQUESTED**

v.

BRIAN SANDOVAL, in his official capacity as Governor of the State of Nevada; DIANA ALBA, in her official capacity as Clerk for Clark County; AMY HARVEY, in her official capacity as Clerk for Washoe County; and ALAN GLOVER, in his official capacity as Clerk-Recorder for Carson City,

Defendants.

SPECIAL SCHEDULING REVIEW REQUESTED

1. Special Scheduling Review Is Requested. The parties wish to proceed expeditiously to the merits of this matter and agree, as described further below, that if the pending motion to dismiss filed by Defendant Brian Sandoval and joined by Defendant Alan Glover is denied, any party wishing to file a motion for summary judgment will do so within 21 days following any denial of the pending motion to dismiss, or within 21 days following the ruling on the pending motion to intervene, whichever is later in time. The parties further agree that in the event that all motions for summary judgment are denied by the Court, the parties will proceed based upon the schedule described below, which is contingent on the date of the Court's disposition of the motions for summary judgment. Once dates certain are known, Plaintiffs will file an updated discovery plan and scheduling order within five days. Because the proposed schedule may potentially cause the discovery cut-off to occur more than 180 days from the date that the first defendant appeared, the parties respectfully request special scheduling review of their proposed schedule.

2. Meeting. Pursuant to Fed. R. Civ. P. 26(f) and LR 26-1(a), a meeting was held on May 24, 2012, and was attended by Tara Borelli, Peter Renn, Melanie Cristol and Kelly Dove on behalf of all Plaintiffs; and C. Wayne Howle for Defendant Brian Sandoval; Herbert B. Kaplan for Defendant Amy Harvey; and Randal R. Munn for Defendant Alan Glover. Plaintiffs' counsel conferred separately with Michael Foley, counsel for Defendant Diana Alba.

3. Discovery Plan. The parties jointly propose to the Court the following discovery plan:

1 (a) Initial Disclosures. The parties have until June 7, 2012, 14 days after the
2 LR 26-1(d) and Fed. R. Civ. P. 26(f) meeting was held, to serve their initial disclosures on all
3 parties pursuant to Fed. R. Civ. P. 26(a)(1).

4 (b) Subject of Discovery. Plaintiffs are eight same-sex couples who allege that
5 Defendants' exclusion of them from the ability to marry, or to have a valid marriage from another
6 jurisdiction recognized as a marriage, violates the guarantees of equal protection based on sexual
7 orientation and sex under the Fourteenth Amendment to the United States Constitution. To the
8 extent that any discovery occurs before the filing of cross-motions for summary judgment, the
9 parties anticipate that the following issues may be subject to discovery: the factual bases of
10 Plaintiffs' claims, any governmental interests that any Defendant may advance as a rationale for
11 the exclusion of Plaintiffs from marriage, and any other defenses that Defendants may raise.

12 (c) Motions for Summary Judgment. As noted above, if the pending motion to
13 dismiss is denied, any party wishing to file a motion for summary judgment shall do so within 21
14 days after a denial of the pending motion to dismiss, or 21 days following the ruling on the
15 pending motion to intervene, whichever is later in time. The parties also respectfully request that
16 any responsive opposition brief be due 60 days after the filing of the motion, so as to permit the
17 standard period of time provided by LR 26-1(e)(3) for expert discovery, if any is necessary. The
18 parties agree that reply briefs may be filed within 30 days after opposition briefs are due.

19 (d) Other Dispositive Motions. In the event that all motions for summary
20 judgment filed pursuant to paragraph 3(c) are denied, the parties shall have until 30 days after the
21 discovery cut-off date described below to file any other dispositive motions. This does not
22 exceed the limit of 30 days following the discovery cut-off date that LR 26-1(e)(4) presumptively
23 sets for filing dispositive motions.

24 (e) Discovery Cut-Off Dates. In the event that all motions for summary
25 judgment filed pursuant to paragraph 3(c) are denied, the parties agree that the discovery cut-off
26 date will be 90 days from the date of the Court's last disposition of any party's motion for
27 summary judgment.

28 (f) Fed. R. Civ. P. 26(a)(2) Disclosures (Experts). Disclosure of experts shall

1 proceed according to LR 26-1(e)(3), which provides that:

2 (1) The disclosure of experts and expert reports shall occur 60 days
3 before the discovery cut-off date; and

4 (2) The disclosure of rebuttal experts and their reports shall occur 30
5 days before the discovery cut-off date.

6 4. Other items.

7 (a) Amending the Pleadings and Adding Parties. The parties have until 75
8 days before the discovery cut-off date to file any motion to amend the pleadings or to add parties.

9 (b) Interim Status Report. The undersigned counsel certify that they have read
10 LR 26-3 and that the parties shall file the interim status report required by LR 26-3 not later than
11 60 days before the discovery cut-off date.

12 (c) Settlement. The issue of whether settlement discussion is appropriate was
13 addressed, and given the nature of the case, none of the parties believes that this case is amenable
14 to a resolution through settlement.

15 (d) Pretrial Order. The pretrial order shall be filed by 30 days after the date set
16 for filing dispositive motions in the case. This case is suspended if the dispositive motions are
17 timely filed. The disclosures required by FRCP 26(a)(3) shall be made in the joint pretrial order.

18 (e) Court Conference. The parties do not request a conference with the Court
19 before entry of the scheduling order.

20 (f) Later Appearing Parties. If an additional defendant should appear,
21 Plaintiffs shall serve a copy of this discovery plan and scheduling order within five days after
22 such defendant becomes a party to the case. This discovery plan and scheduling order shall apply
23 to such later-appearing parties, unless the Court, on motion and for good cause shown, orders
24 otherwise.

25 (g) Extension or Modification of the Discovery Plan and Scheduling Order.
26 LR 26-4 governs modifications or extensions of this discovery plan and scheduling order. Any
27 stipulation or motion must be made not later than 21 days before the expiration of the subject
28 deadline and comply fully with LR 26-4.

1 (h)(1) Clawback Agreement. In the event that any party (the “Discloser”)
2 produces material or documents without intending to waive a claim of privilege or confidentiality,
3 the Discloser does not waive any claim of privilege or confidentiality if, within a reasonable
4 amount of time after the Discloser actually discovers that such material or documents were
5 produced, the Discloser notifies all other parties (the “Recipient(s)”) of the inadvertent disclosure
6 of privileged or confidential items, identifying the material or documents produced and stating the
7 privilege or confidentiality provision asserted. Mere failure to diligently screen documents before
8 producing them does not waive a claim of privilege or confidentiality.

9 (h)(2) If the Discloser asserts that it inadvertently produced privileged or
10 confidential items in accordance with this Claw Back Agreement, the Recipient(s) must return the
11 specified material or documents and any copies within ten days of the notification. The
12 Recipient(s) must further permanently destroy any electronic copies of such specified material or
13 documents and affirm in writing to counsel for the Discloser of such destruction.

14 (h)(3) In the event that the Recipient(s) contends the documents are not subject to
15 privilege or confidentiality as asserted by the Discloser in accordance with this Claw Back
16 Agreement, the Recipient(s) may, following the return and destruction described in paragraph
17 (h)(2) above, challenge the privilege claim through a motion to compel or other pleading with the
18 Court in which the litigation is currently pending. The parties agree that any review of items by
19 the judge shall be an in camera review.

20 (h)(4) Should the Recipient(s) not challenge the Discloser’s claim of privilege or
21 confidentiality, or should the presiding judge determine that the documents are in fact subject to
22 privilege or confidentiality, the documents, or information contained therein or derived therefrom,
23 may not be used in the litigation or against the Discloser in any future litigation or arbitration
24 brought by the Recipient(s). Nothing contained within this Claw Back Agreement shall be
25 deemed to waive any objection that any party may wish to assert under applicable state or federal
26 law.

27 (i) Privilege. No party by virtue of this agreement waives any claim of privilege or
28 right to seek a protective order on grounds of privilege.

1 Dated: June 1, 2012

2 LAMBDA LEGAL DEFENSE AND
3 EDUCATION FUND, INC.

4 /s/ Tara L. Borelli

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16 *Attorneys for Plaintiffs*

17 Dated: June 1, 2012

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19 Nevada Attorney General

20 /s/ C. Wayne Howle

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25 *Attorneys for Defendant Brian Sandoval*

26 Dated: June 1, 2012

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Dated: June 1, 2012

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/s/ Randal R. Munn

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Dated: June 1, 2012

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District Attorney

/s/ Michael Foley

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Attorneys for Defendant Diana Alba

ORDER

IT IS SO ORDERED.

Dated: _____, 2012.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I will electronically file the foregoing with the Clerk of the Court for the United States District Court, District of Nevada by using the CM/ECF system on June 1, 2012. All participants in the case are registered CM/ECF users, and will be served by the CM/ECF system.

By: /s/ Jamie Farnsworth
Jamie Farnsworth
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